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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 175

TRAVELERS INSURANCE COMPANY, PETITIONER

v.

WALTER J. TONER, DEPUTY COMMISSIONER, UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, AND ELIZABETH H. FREDERICKS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT DEPUTY COMMISSIONER IN OPPOSITION

OPINION BELOW

The District Court dismissed petitioner's complaint without an opinion (R. 14). The *per curiam* opinion of the Court of Appeals for the District of Columbia Circuit, affirming the judgment of the lower court (R. 18-19), is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 24, 1951 (R. 20). The petition for a writ of certiorari was filed on July 6, 1951. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTION PRESENTED

Whether death benefits payable to a workman's widow under Section 9 of the Longshoremen's and Harbor Workers' Compensation Act [1] should be measured by the provisions of that Section in effect at the time the workman was injured or by the more liberal provisions of the Section as amended after his injury but before his death.[2]

STATUTE INVOLVED

The statute involved is the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, as amended by the Act of June 24, 1948, 62 Stat. 602, 33 U. S. C., Supp. IV, 906, 909. The pertinent provision of the Amendatory Act of June 24, 1948, is Section 6, which reads:

> The provisions of this Act shall be applicable only to injuries or deaths occurring on or after the effective date hereof.

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[1] Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. 901 *et seq.*

[2] 44 Stat. 1424 (1927), as amended by the Act of June 24, 1948, 62 Stat. 602, 33 U. S. C., Supp. IV, 909.

STATEMENT

This is an action to review and set aside a death benefit award order of respondent, Walter J. Toner, Deputy Commissioner, Bureau of Employees' Compensation, District of Columbia Compensation District. On January 29, 1947, William W. Fredericks, Jr., an employee of a corporation for which petitioner, Travelers Insurance Company, carried the workmen's compensation coverage, was injured while in the course of his employment. On behalf of the employer, petitioner paid Fredericks the sum of $2,254.63, which was the amount to which he was entitled as compensation for periods of illness between the date of injury, January 29, 1947, and the date of his death, resulting from the injury (as found by the Deputy Commissioner, R. 8-9), on July 1, 1949. On June 24, 1948, one year prior to Fredericks' death, the Longshoremen's and Harbor Workers' Compensation Act was amended so as to provide, *inter alia,* enlarged death benefits.[3] In a

[3] The amendatory Act increased maximum funeral expenses allowable from $200 to $400; increased benefits for children of deceased workmen from 10% to 15% of the average wage of deceased; and increased the benefits of orphaned children from 15% to 35% of the average wage of deceased. In addition, it provided that in computing death benefits, the average weekly wage of the deceased be considered to have been not more than $52.50 nor less than $18, while the original Act provided that the average weekly wage of the deceased be considered to have been not more than $37.50 nor less than $12. See 62 Stat. 602-603 (1948), 33 U. S. C., Supp. IV, 909(a), (b), (c), and (e).

The original Act also provided that the total compensation payable for injury or death should not exceed the sum of $7,500, 44 Stat. 1434 (1927), 33 U. S. C. 914(m), while the amendatory Act provides that the maximum limitation

claim for compensation under the District of Columbia Workmen's Compensation Act[4] by the widow of the deceased on behalf of herself and for the children of the deceased employee, the Deputy Commissioner awarded the claimant the enlarged benefits in effect at the time of the death of the deceased[5] (R. 9-10).

Petitioner filed a complaint in the United States District Court for the District of Columbia for an injunction requiring defendant to set aside the compensation award (R. 4-7). The District Court granted a motion (R. 13-14) of respondents Toner and Mrs. Fredericks, who had been permitted to intervene (R. 11-12), to dismiss the complaint (R. 14). Petitioner appealed from so much of the judgment of the court as affirmed the Deputy Commissioner's application of the increased scale of benefits contained in the amendments to the Longshoremen's and Harbor Workers' Compensation

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for disability is $11,000 and provides that such limitation shall not apply in case of death. 62 Stat. 603 (1948), 33 U. S. C., Supp. IV, 914(m).

[4] Act of May 17, 1928, 45 Stat. 600, D. C. Code (1940), § 36-501, extending to the District of Columbia the basic federal statute, the Longshoremen's and Harbor Workers' Compensation Act.

[5] If the original Act had been in force at the time of the death of Fredericks, the deceased employee in the instant case, his widow would have been entitled to receive funeral expenses not exceeding $200.00 and $13.12 per week during widowhood, the total not to exceed $7500.00, while each surviving child was entitled to $5.25 per week. Under the amended act in force at the time of death of the deceased, the widow was awarded reasonable funeral expenses not exceeding $400.00 and compensation at the rate of $18.38 per week during widowhood without maximum limitation, while each surviving child was awarded $7.88 per week.

Act, enacted June 24, 1948 (R. 15). The Court of Appeals, in a *per curiam* opinion, affirmed the lower court's judgment (R. 18-19).

ARGUMENT

In amending the Longshoremen's and Harbor Workers' Compensation Act, Congress expressly covered the matter of the effective date of the amendment, stipulating that the provisions of the amendatory Act "shall be applicable only to injuries or deaths occurring on or after the effective date hereof."[6] This case is one of "death occurring after the effective date" of the Act. As pointed out by the Court of Appeals, "the precise question" raised by petitioners "has been answered in the affirmative by several Federal courts"[7] and there is thus no conflict of decisions calling for resolution. It is submitted that the Deputy Commissioner was clearly correct in awarding benefits at the rates in effect at the date of death and that review by this Court is not warranted.

To avoid the consequences of the express declara-

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[6] 62 Stat. 604 (1948), § 6, 33 U. S. C., Supp. IV, 906 note.

[7] R. 19, citing *Penn Jersey Welding Co.* v. *Lowe*, 183 F. 2d 936 (C. A. 3, 1950); *Hampton Roads Stevedoring Corp.* v. *O'Hearne*, 184 F. 2d 76 (C. A. 4, 1950); *Brown-Pacific Maxon Co.* v. *Cardillo*, 91 F. Supp. 968 (S. D. N. Y., 1950). The Court of Appeals in the present case stated that "we are satisfied that the cited decisions of the Third and Fourth Circuits and of the District Court for the Southern District of New York are correct and should be followed." (R. 19.) A very recent case in the United States District Court for the Western District of Washington holding to the same effect on this point is *Lewis Drake Puget Sound* v. *O'Leary*, Civil No. 2524, decided June, 1951.

tion of the Act, petitioner is forced to argue, in effect, that "deaths occurring after the effective date" must mean "deaths resulting from injuries which occurred after the effective date" and that the result reached by the court gives an improper retroactive effect to the amendment. Congress could have indicated such a limitation quite simply if it had so intended by merely omitting the phrase "or deaths" entirely. The interpretation proposed by petitioners would change the clear meaning of the legislation.

Moreover, the conclusion reached by the Court of Appeals has been held as not giving retroactive effect to the amendment to the Act, as urged by petitioner.[8] *Hampton Roads Stevedoring Corp.* v.

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[8] Petitioner relies on two statements from the legislative history of the amendment. The first statement from H. Rep. No. 2095, 80th Cong., 2d Sess., 9 (1948) states:

> Section 6: Section 6 of the bill, as introduced, provides that H. R. 6647 shall be applicable only to injuries or deaths occurring on or after its effective date. Your committee believes that it is necessary and desirable to make the act prospective in its application in order to avoid administrative difficulties and constitutional questions which might be presented by a retrospective change in the compensation provisions. Furthermore, prospective application will enable employers to make adjustments in employee-compensation coverage to reflect the changes.

The approval of the provision that "the bill * * * shall be applicable * * * to deaths occurring on or after its effective date" in the same paragraph which discusses an intention not to make the amendment operate retroactively supports the inference that Congress considered the death benefits as separate and apart from the provisions for injuries and as not operating retroactively.

The second statement quoted by petitioner is from oral testimony in the April, 1948, *Hearings before a Sub-committee of*

O'Hearne, 184 F. 2d 76 (C. A. 4, 1950). By the specific wording of the amendment it is applicable to "deaths occurring on or after" June 24, 1948. The death of the injured employee in the instant case occurred July 1, 1949, rendering the provisions of the amendatory act applicable.

The conclusion reached by the court on this question is also consistent with the plan of the Longshoremen's and Harbor Workers' Compensation Act and the construction given it in other connections. The Act has been construed by the courts as giving two separate rights, one providing for compensation for injuries received by the employee and payable to the injured employee (Section 8, entitled "Compensation for Disability") and the other providing for death benefits payable to the dependents of the injured employee (Section 9, entitled "Compensation for death"). The two sections have been construed as being completely sepa-

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the Senate Committee on Labor and Public Welfare on S. 2237 and Related Bills, 80th Cong., 2d Sess., 56, 62 (1948) and reads:

> It is further suggested that the act specifically state that the proposed increases in compensation be applicable only to cases where the injury occurred after the effective date of the amendment.

The full paragraph, not quoted by petitioner, explains clearly that the Committee was considering compensation for injuries only and not compensation for death. The rest of the paragraph reads:

> The industry does not wish to be confronted with a law that would encourage malingering and self-induced injury, and defeat the intent and purpose of the Longshoremen's and Harbor Worker's Compensation Act. It is fearful that the proposed amendments may produce such a result.

rate and the courts have been uniform in holding that the right of the employee's widow and dependent children to recover death benefits does not arise until the date of the employee's death, when "a new cause of action arises." *International Mercantile Marine Co.* v. *Lowe,* 93 F. 2d 663, 665 (C. A. 2, 1938), certiorari denied, 304 U. S. 565; *Hitt* v. *Cardillo,* 76 App. D. C. 334, 131 F. 2d 233 (1942), certiorari denied, 318 U. S. 770. See also *Norton* v. *Travelers Insurance Co.,* 105 F. 2d 122 (C. A. 3, 1939). Courts have recognized this distinction in interpreting provisions of Section 14(m) that "the total compensation payable under this Act for injury or death shall in no way exceed the sum of $7,500." The above three cases held that compensation for injury under Section 8 does not prevent the full amount of $7500.00 from being paid in death benefits under Section 9.[9]

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[9] The decision is also in accord with the policy of the law, as expressed by this Court, to give a liberal interpretation to the provisions of this Act. In *Baltimore & Philadelphia Steamboat Co.* v. *Norton,* 284 U. S. 408, 414, this Court stated: "Such laws [the Longshoremen's and Harbor Workers' Compensation Act] operate to relieve persons suffering such misfortunes of a part of the burden and to distribute it to the industries and mediately to those served by them. They are deemed to be in the public interest and should be construed liberally in furtherance of the purpose for which they were enacted and, if possible, so as to avoid incongruous or harsh results."

CONCLUSION

The decision below is correct and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.
HOLMES BALDRIDGE,
Assistant Attorney General.
SAMUEL D. SLADE,
SIDNEY J. MACHTINGER,
Attorneys.

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